NOTES OF CASES.

Injunction—Maintenance of Action at Law in Foreign State—Pennsylvania Coal Co. v. Hurney, 97 Atl. 736.—In the principal case it was laid down that where the defendant in a tort action in another state on a cause of action arising in Pennsylvania holds property and transacts business in the other state, and the jurisdiction over the subject-matter of the suit in the other state is admitted, and there is no evidence of fraud, embarrassment or oppression, the maintenance of the tort action will not be enjoined. The opinion concludes:

"The appellant testified that, while he had lived for some years within the State of Pennsylvania, in the county where his injuries were incurred, and owned a home there, yet he brought his action in New York because he had decided to remove himself and family to that state; that he wanted his children to be kept away from the mines where he was hurt and thought his wife could more readily obtain work in the City of New York and thus help support their family; moreover, he said that he had cousins living in that place, and was informed he could get better treatment for his eyes there.

After consideration of the evidence and the findings of the learned chancellor we do not discover anything upon the record which would justify the conclusion that the appellant instituted his action in the State of New York instead of Pennsylvania in order to evade our laws or that trial of the case in the jurisdiction chosen by him will to any degree bring about that result; in other words, we see nothing which entitled the appellee to the extraordinary relief granted by the court below. The decree is reversed and the preliminary injunction is dissolved."

Interstate Commerce—Federal Employers' Liability—Hours of Labor Act—St. Joseph, etc., R. Co. v. United States, C. C. A. 8th Ct., 232 Fed. 349.—In the principal case it was laid down by the federal circuit court that a train composed of cars loaded with material to repair the roadbed, which originated in another state and had arrived in the state in which it was to be used, but had not yet arrived at its destination, was still in "interstate commerce," and the employees thereon governed by the Federal Hours of Service Act.

It was held that where a fireman on such a train after it was run onto a siding was required to keep watch of the engine and keep up steam therein until more than sixteen hours after he began work, the Hours of Service Act was violated. The court said:

"The contention of the defendant is that the act of Congress does not apply to an employee on a work train, operated wholly within one state, although the train was brought from another state and the material transported was intended for use on the roadbed of the

defendant beyond the point where the offense was committed, the road being a through highway of interstate commerce.

In our opinion this is too narrow a view to take of this act, which was intended, as has been repeatedly held by the Supreme Court, as well as the inferior courts of the United States, as have the other Safety Appliance Acts, to be a remedial statute, intended to promote the safety of employees and travelers on trains moving in interstate commerce, and should be liberally construed to effect its purpose (Johnson *v.* Southern P. Co., 196 U. S. 1, 25 Sup. Ct. 158, 49 L. Ed. 363; Schlemmer *v.* Buffalo R. R., 205 U. S. 1, 27 Sup. Ct. 407, 51 L. Ed. 681; Southern R'y *v.* United States, 222 U. S. 20, 32 Sup. Ct. 2, 56 L. Ed. 72; San Pedro, etc., R'y *v.* United States, 213 Fed. 326, 130 C. C. A. 28; Great Northern R'y *v.* United States, 218 Fed. 302, 134 C. C. A. 98, L. R. A. 1915D, 408).

That the fireman on an interstate train is within the meaning of the act is not questioned, and cannot well be, but it is claimed that the interstate movement has ceased; as the material in the cars was to be used on the tracks of the defendant in the State of Kansas only, the train was no longer in interstate commerce. This contention is untenable, as the train, had not yet reached its destination and was to be carried further (McNeill *v.* Southern R'y, 202 U. S. 543, 26 Sup. Ct. 722, 50 L. Ed. 1142).

Nor can the contention of the defendant that, as the material was to be used on its tracks, although it is an interstate highway, the employee was not engaged in interstate commerce, be sustained. In Pedersen *v.* Delaware, etc., R'y (229 U. S. 156, 33 Sup. Ct. 648, 57 L. Ed. 1125, Ann. Cas. 1914C, 153) it was held that one carrying material to be used in repairing tracks, bridges, engines or cars, after they have become and during their use as instrumentalities of interstate commerce, is engaged in interstate commerce within the meaning of the act. In North Carolina R'y *v.* Zachary (232 U. S. 248, 34 Sup. Ct. 305, 58 L. Ed. 591, Ann. Cas. 1914C, 159) it was held that when a freight train from an intrastate point is being made up of cars, some from a train which started in another state, an employee preparing an engine to move such a train is engaged in interstate commerce even if the interstate cars had not yet been coupled up.

In Johnson *v.* Great Northern R'y (178 Fed. 643, 102 C. C. A. 89) this court held that one engaged in examining car couplings of cars of a train while on a switch track, some of the cars containing interstate freight shipments, is employed in interstate commerce. In Lamphere *v.* Oregon R'y & Nav. Co. (196 Fed. 336, 116 C. C. A. 156, 47 L. R. A., N. S., 1) it was held that a locomotive fireman, struck and killed by a train while crossing a track on his way to the station to be transported to another place in the same state, to relieve there a fireman engaged on an interstate train, was employed in in-

terstate commerce at the time. This case was cited with approval by the Supreme Court in the Pedersen case.

In Illinois Central R'y *v.* Porter (207 Fed. 311, 125 C. C. A. 55) one engaged in carrying interstate freight from the freight house to the cars with a hand truck was held to be engaged in interstate commerce. A track walker repairing a switch in a terminal yard, used for interstate as well as intrastate traffic, was held, in Central R. R. *v.* Colasurdo (192 Fed. 901, 113 C. C. A. 379), to be employed in interstate commerce. One engaged in making repairs on an engine used for interstate commerce, after it had reached the end of the run, and placed on the fire track to await the time for the return trip to another state, was held in Baltimore & Ohio R. R. *v.* Darr (204 Fed. 751, 124 C. C. A. 565, 47 L. R. A., N. S., 4) to be engaged in interstate commerce. Telegraph operators receiving or transmitting dispatches affecting the movement of interstate trains have been held to be engaged in interstate commerce (Baltimore & Ohio R. R. *v.* Interstate Commerce Comm'n, 221 U. S. 612, 31 Sup. Ct. 621, 55 L. Ed. 878).

That the fireman in this instance had been detailed to watch the locomotive engine during the excess hours does not affect the result. This was expressly decided by this court in San Pedro, etc., R'y *v.* United States (supra) and Great Northern R'y *v.* United States (supra), where the facts were identical with those in this case.

The fact that this fireman was employed on a work train was wholly immaterial, if it was, in fact, an interstate train. The act of Congress makes no such exception, and the courts certainly are powerless to do so. The gist of the offense is that the carrier is engaged in the transportation of passengers or property by railroad from one state to another, and that the employee is actually engaged in or connected with the movement of any train. 'Any train' is certainly broad enough to include a work train.

As the agreed statement of facts shows that the employee was required to remain on duty over 20 hours; that the train on which he was employed had been brought from another state and had not yet reached its final destination; as the material was intended to be carried further; that the material was to be used in repairing the track, which was an interstate highway, the employee was, at the time, engaged in interstate commerce in connection with the movement of an interstate train. The judgment of the court below (the action being by the United States against the plaintiff in error to recover penalties for violation of the act) was right, and is affirmed."

Interstate Commerce—Railway Appliances—Intrastate Employee.—There has been some criticism of the decision of the Supreme Court of the United States in the case of Texas & Pacific Ry. Co. *v.* Rigsby, 36 Sup. Ct. 482, holding that an employee of an interstate